

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Central Maine Power Company

Docket No. ER05-1169-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS,
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued August 24, 2005)

1. In this order, the Commission accepts and suspends for a nominal period, and makes effective June 1, 2005, subject to refund, a proposed annual update to Central Maine Power Company's (CMP) formula rates in Schedule 21-CMP of the ISO-New England, Inc. Transmission, Markets and Services Tariff. In addition, the Commission establishes hearing and settlement judge procedures.

Background

2. On June 30, 2005, CMP submitted its proposed annual update to the formula rate in Schedule 21-CMP of the ISO-New England, Inc. Transmission, Markets and Services Tariff. One of the components of the filing updates the return on equity (ROE) component of CMP's formula rates to include a 12.8 percent ROE.

3. Notice of the filing was published in the *Federal Register*, 70 Fed. Reg. 40,698 (2005), with interventions and protests due on or before July 21, 2005. A timely intervention was filed by the Maine Public Service Commission (Maine Commission). A subsequent protest was also filed by the Maine Commission.

4. The Maine Commission argues that CMP's proposed annual update to its formula rate reflects two violations of the formula rate as previously approved in Docket No. ER00-26-002, *et al.*¹ First, CMP has reclassified certain facilities as solely transmission that previously were not classified as solely transmission, thereby increasing transmission

¹ See *Central Maine Power Co.*, 92 FERC ¶ 61,272 (2000); see generally *Central Maine Power Co.*, 91 FERC ¶ 61,001 at 61,004-05 (2000) (describing merger commitments that included hold harmless rate commitments).

rates by approximately \$2.4 million. The Maine Commission alleges this will result in double recovery of CMP's costs since, in CMP's retail rates, those same facilities are still classified as distribution. Second, CMP has included acquisition premium-related goodwill in its common equity, resulting in an increase in transmission rates of approximately \$336,000. The Maine Commission alleges this is contrary to the formula rate and a prior Commission order.² The Maine Commission asks that this Commission not only revise CMP's formula rate recovery prospectively, but also require CMP to refund these formula rate over-collections for past periods.

Discussion

5. Pursuant to 18 C.F.R. § 385.214 (2005), the Maine Public Utilities Commission's notice of intervention serves to make it a party to this proceeding.

6. CMP's proposed annual update to the formula rate raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. In addition to the matters raised by the Maine Commission, we note that, in our March 24, 2004 order in Docket No. ER04-157-000, *et al., ISO New England, Inc.*, 106 FERC ¶ 61,280 at P 2-3, 232-50, *errata*, 107 FERC ¶ 61,051, *order on reh'g*, 109 FERC ¶ 61,147 at P 193-207 (2004), we accepted and suspended, and made effective, subject to refund, a proposed 12.8 percent base ROE effective as of the New England Regional Transmission Organization Operations Date, February 1, 2005, and set that matter for hearing. The proposed annual update to the formula rate at issue here reflects the same proposed 12.8 percent ROE that is at issue in Docket No. ER04-157-000.³

7. Our preliminary analysis indicates that CMP's proposed annual update to the formula rate has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept CMP's proposed annual update to the formula rate for filing, suspend it for a nominal period, make it effective June 1, 2005, as requested, subject to refund, and set it for hearing and settlement judge procedures. We will grant waiver of the prior notice requirement to make the annual update to the formula rate effective June 1, 2005,⁴ as requested, subject to refund.

² See *Central Maine Power Co.*, 91 FERC ¶ 61,001 at 61,004-05 (2000) (describing merger commitments that included hold harmless rate commitments).

³ See *Central Maine Power Co.*, 112 FERC ¶ 61,017 (2005).

⁴ *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106 at 61,338 (Commission will generally grant waiver of notice when effective date is already provided for), *order on reh'g*, 61 FERC ¶ 61,089 (1992).

8. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁵ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁶ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) CMP's proposed annual update to its formula rate is hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2005, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning CMP's proposed annual update to its formula rate. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they

⁵ 18 C.F.R. § 385.603 (2005).

⁶ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding administrative judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's decision, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.